FILED MAY 10, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **THADDEUS JULIAN CULPEPPER,** **Member No. 220194,** A Member of the State Bar.	)	Case No.: **11-O-17682-RAH** **DECISION**

Introduction[1]

In this disciplinary proceeding, respondent Thaddeus Julian Culpepper is charged with failing to competently perform legal services and failing to promptly release a file in a single-client matter. This court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. Based upon the nature and extent of the misconduct, as well as the applicable mitigating and aggravating circumstances, the court recommends, among other things, a 30-day period of actual suspension and until restitution.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on October 9, 2012. On November 14, 2012, respondent filed a response to the NDC.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

The State Bar was represented by Deputy Trial Counsel Lara Bairamian. Respondent represented himself in pro per. Trial commenced on January 31, 2013. The court took this matter under submission on February 12, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 16, 2002, and has been a member of the State Bar of California at all times since that date.

Facts

On October 1, 2010, Scott Gwaltney (Gwaltney) hired respondent to represent him in an action entitled *Gwaltney v. Williams*, Los Angeles County Superior Court case no. YC062078. Gwaltney paid respondent $500 in advance fees. Gwaltney had already filed the complaint in the action and was acting in pro per in the matter. Since the case was already in default, respondent was retained simply to prove up the default, obtain a default judgment, and collect the judgment. Gwaltney retained respondent because, as a medical doctor employed in an emergency room, it was difficult for Gwaltney to personally participate in the required court proceedings.

On October 22, 2010, the court scheduled an Order to Show Cause (OSC) hearing for failure to file a default judgment. Gwaltney gave respondent notice of the OSC and expected respondent to appear on his behalf. Respondent was aware of the hearing and said he would attend. On October 22, 2010, the court held the hearing on the OSC. Respondent did not attend the hearing, nor did he advise Gwaltney that he would not attend. While respondent made some efforts to obtain a substitution of attorney prior to the scheduled hearing, those efforts were not successful.[2]

[2] Respondent made arrangements to meet Gwaltney at a nightclub to obtain his signature on the substitution of attorney form. When Gwaltney did not show up at the meeting, respondent handed the substitution of attorney form to the deejay at the club, with instructions to give it to Gwaltney when he saw him. He made no other attempts to obtain Gwaltney's signature. The deejay did not deliver the form to Gwaltney.

At the October 22, 2010 hearing, the court continued the OSC hearing to November 12, 2010. Respondent was aware of this continuance, but did not appear at the November 12th hearing because he had another hearing that morning. He did not notify Gwaltney that he would not appear. On November 12, 2010, the court ordered that Gwaltney's action be dismissed because of his failure to obtain a default judgment against the defendant.

Because no substitution of attorney had been filed, Gwaltney remained in pro per in the case. Therefore, Gwaltney received a notice from the Superior Court indicating that the case had been dismissed. On November 21, 2010, Gwaltney notified respondent that his case had been dismissed.

On November 29, 2010, respondent emailed a copy of the substitution of attorney form to Gwaltney, who signed and returned the form to respondent. Respondent filed the substitution of attorney form on February 2, 2011. On the same date, respondent filed a motion to set aside the dismissal.

On February 18, 2011, the court granted the motion and set aside the dismissal. The court ordered that Gwaltney submit a request for default judgment within ten days. The court further ordered that the case be set for an OSC hearing on March 28, 2011, re: failure to file request for default judgment. The court stated that if Gwaltney's default judgment package was received prior to March 28, 2011, then respondent was not required to appear at the March 28, 2011 hearing. The court clerk served the minute order on respondent at his law office address, and respondent received the order.

On February 28, 2011, respondent prepared and submitted a request for entry of Clerk's Judgment. The clerk rejected respondent's request, stating "Clerk cannot process, please proceed with a Court Judgment. A 585 Declaration is required. Please submit form CIV-100 completed

appropriately." On February 28, 2011, the clerk served the notice of rejection on respondent, who received it.

On March 7, 2011, respondent sent an email to Gwaltney, advising Gwaltney that the filing was rejected because the clerk wanted him to file a 585 declaration. He advised Gwaltney that the clerk was incorrect in requesting a 585 declaration.[3] Nevertheless, he promised to send the declaration to Gwaltney that day. He did not do so, but wrote another email, stating that he would send it the following day. He did not send it on March 8, 2011.

On March 23, 2011, respondent finally sent Gwaltney a draft 585 declaration with blanks to be filled in. In that correspondence, he requested any information that Gwaltney had to establish the additional profits, as evidenced by the bar receipts. Gwaltney responded that he had the receipts, and would send them to him. On March 24, 2011, Gwaltney obtained the receipts, and faxed them to respondent on March 31, 2011.

On March 28, 2011, respondent appeared at the OSC re failure to file request for default judgment. Respondent requested a continuance of the matter. The OSC was continued to April 4, 2011.

On April 4, 2011, Gwaltney appeared in court for the OSC, but respondent did not. Respondent telephoned the court and requested additional time to submit the necessary documentation for the request for default judgment. The court continued the OSC to April 11, 2011.

On April 11, 2011, respondent appeared in court for the OSC. At the hearing, respondent represented to the court that he had submitted the request for entry of default judgment by fax to

[3] At trial, respondent stated that he could not file a proper default judgment package because he was waiting for bar receipts from Gwaltney, to supplement the claimed damages. It is correct that Gwaltney, at that time, had not yet sent him the bar receipts to allow him to complete the default judgment package. However, there was no clear and convincing evidence that respondent ever asked Gwaltney to provide such information.

the court that morning. The court continued the OSC to May 2, 2011. The court never received the request for entry of default judgment by fax from respondent, and respondent never properly filed the request for entry of default judgment. Although respondent claimed to fax-file the complete default package to the court, there was no clear and convincing evidence that he did so.

On April 13, 2011, Gwaltney sent an email to respondent terminating respondent's services. Gwaltney hired attorney Kyle P. Kelley and paid him $1,000 for his services. Gwaltney told respondent to return the $500 Gwaltney had paid respondent, return the file, and sign a substitution of attorney. Respondent received the email; however, he did not return the file to Gwaltney or his new attorney, and did not refund the $500 in fees.

On April 27, 2011, Kelley sent respondent a letter stating that he had been retained by Gwaltney to take over the lawsuit from respondent. Respondent received the letter. Kelley asked respondent to send him the file for the case. Respondent did not send the file to Kelley.

On May 4, 2011, Kelley sent respondent another letter requesting the file. Respondent received the letter. Kelley said that the judge had granted the last continuance in the case, and that it was "imperative" that respondent send him the file so Kelley could prepare and file a timely default judgment package in the case. Respondent did not send the file to Kelley.[4]

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to file a request for entry of default on behalf of Gwaltney that was complete and non-defective; by failing to appear at the hearing on the OSC on October 22, 2010, after telling Gwaltney that he would do so; by failing to appear at the

[4] Kelley was able to file the default package with the Superior Court on May 13, 2011. The court granted the request on July 29, 2011.

OSC hearing on April 4, 2011; and by failing to obtain a default judgment during the six months he represented Gwaltney, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Two - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By failing to provide the case file to Kelley or Gwaltney after his services were terminated, despite receiving requests from Gwaltney and Kelley for the file, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client's papers and property, in willful violation of rule 3-700(D)(1).

Aggravation[5]

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent's prior record of discipline is an aggravating circumstance. Respondent has one prior imposition of discipline.

On October 26, 2010, the California Supreme Court issued an order (S185559) suspending respondent from the practice of law for two years, stayed, with three years' probation. In this matter, respondent stipulated to five counts of misconduct in three separate matters, including disobeying a court order, failing to report judicial sanctions to the State Bar, failing to perform legal services with competence, failing to keep his clients informed of significant developments,

[5] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

and collecting an illegal fee. In mitigation, respondent was candid and cooperative, he acted in good faith, and his misconduct did not cause harm. No aggravating factors were involved.

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent was found culpable of two acts of misconduct. Multiple acts of misconduct are an aggravating factor.

Misconduct Surrounded/Followed by Dishonesty or Overreaching (Std. 1.2(b)(iii).)

The State Bar asserted that respondent's misconduct was surrounded by dishonesty or overreaching. These assertions, however, were not supported by clear and convincing evidence, and, therefore, do not warrant consideration in aggravation.

Significant Harm (Std. 1.2(b)(iv).)

Respondent's misconduct resulted in significant harm to his client. Said harm includes respondent's failure to refund Gwaltney's $500, the delay of Gwaltney's matter, and the stress and hassle of dealing with respondent's inaction.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

The State Bar asserts that respondent demonstrated indifference toward rectification of or atonement for his misconduct. At trial, respondent seemed to blame Gwaltney for not sending him the bar receipts in a timely manner. But respondent's correspondence with Gwaltney seemed to reflect some remorse for the position in which he had placed Gwaltney. Therefore, the court finds that there is insufficient evidence of indifference or lack of remorse to warrant aggravation.

Mitigation

Community Service

Service to the community is a mitigating factor. (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 799) Respondent produced some evidence of his volunteer work, including his participation as Vice Basilieus of Zeta Tau Chapter of the Omega Psi Phi fraternity. He acts as legal counsel for

this organization, which will host a Youth Leadership Conference, teaching youths the benefits of perseverance in achieving their goals.

Respondent has also worked as a volunteer with the Boys and Girls Clubs, focusing on developing teamwork and assisting the children with their school work. He is entitled to some mitigation for his community service activities.

Discussion

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides, in pertinent part, that when two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(a) provides that, when an attorney has one prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

Standard 2.4(b) provides that a member's culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member's culpability of willfully failing to communicate with a client must result in a reproval or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar urges the court to recommend, among other things, a six-month period of actual suspension. Respondent, on the other hand, argues that he should be permitted to refund the $500 paid by Gwaltney and no culpability should be found.

The court finds *Stuart v. State Bar* (1985) 40 Cal.3d 838, to be somewhat instructive. In *Stuart*, the client's personal injury claim was dismissed due to the attorney's failure to answer defense interrogatories. The attorney also failed to communicate with his client, despite his client's numerous attempts to contact him. In aggravation, the attorney had a prior record of discipline consisting of a private reproval. Noting the attorney's carelessness in running his office and demonstrated lack of diligence and concern for his client's interests, the Supreme Court found that, "Some actual suspension is necessary to bring home to [the attorney] the high degree of care and fiduciary duty he owes to those he represents." *Stuart v. State Bar, supra*, 40 Cal.3d 838, 847. The attorney received a one year suspension, stayed, with one year probation, including a 30-day actual suspension.

The present case is fairly similar to *Stuart*. Although respondent has been previously disciplined for failing to competently perform legal services, it did not prevent the present misconduct. Similar to the Supreme Court's assessment in Stuart, a period of actual suspension is now warranted. That being said, the court is mindful of the fact that the misconduct in the present case was limited to a single client matter. Consequently, the court finds appropriate a level of discipline similar to that recommended in *Stuart*.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of that period of suspension be stayed, and that he be placed on probation for two years, including a minimum period of actual suspension of 30 days.

Recommendations

It is recommended that respondent Thaddeus Julian Culpepper, State Bar Number 220194, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation[6] for a period of two years subject to the following conditions:

1. Respondent Thaddeus Julian Culpepper is suspended from the practice of law for the first 30 days of probation, and he will remain suspended until the following requirement is satisfied:

    i. Respondent must make restitution to Scott Gwaltney in the amount of $500 plus 10 percent interest per year from April 13, 2011 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Scott Gwaltney, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles; and

    ii. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirement, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of

[6] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

iii. If respondent remains suspended for 90 days or more as a result of not satisfying the preceding requirement as a result of not satisfying the preceding requirement, he must also comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension.

2. Respondent must also comply with the following additional conditions of probation:

i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (Office of Probation) on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;

iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;

iv. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request; and

vi. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: May _____, 2013

RICHARD A. HONN
Judge of the State Bar Court